IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sukhdeo Singh V/S State Farm Corp. of India & Ors.

S.B.CIVIL WRIT PETITION No. 2820 of 1992 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of order : 13th April, 2006

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr. R.S.Saluja, for the petitioners.
Mr. Sanjeev Johari, for the respondents.

BY THE COURT:

This writ petition has been filed by the petitioner, challenging the punishment order Ex. 3, dated 4.9.1991, whereby the punishment of compulsory retirement was imposed on him, and the period of his absence from duty was ordered to be treated as 'dies non', and has claimed for reinstatement, continuity of service, and back wages.

The averments of the writ petition are, that the petitioner was appointed on 17.7.1961, in the Mechanised Farm, and later on his services were transferred to State

Farm Corporation of India, which came into existence w.e.f. 1.8.1969, and was working as Electrician under respondent no.2. It is alleged, that while so working he was served with a charge-sheet, vide memorandum dt. 28th Oct/04 Nov 86, and the charge framed was, that while functioning as Electrician, during the year 1978, failed to obey the transfer order, to the Central State Farm, Kokilabari, and further absented himself from duty unauthorisedly, w.e.f. 28.7.1978. Further, he did not obey the order No. SFCI/1-3/75-Estt. Dated 4.9.1981, of SFCI Hqrs. New Delhi, passed after award of the Labour Court dated 1.4.1981, and thereby committed gross misconduct. The details of the imputations were, that the petitioner was transferred to Central State Farm, Kokilabari, in the same capacity, with immediate effect, vide order dt. 6.4.1976, his name was struck off from the pay rolls of the present farm w.e.f. 28.7.1978. As per the information, received from the C.S.F. Kokilabari, the petitioner did not report, and thereby committed gross misconduct, and disobedience of the order, and absented since 28.7.1978. The petitioner alleges to have submitted reply to the charge-sheet, that he was transferred to Kokila bari, Assam, and then was posted at Central Sate Farm Bahraich. Before the transfer, he was reinstated by the Labour Court, vide award dt. 20.5.1975, and vide another award, the respondent was directed by the Labour Court, that the petitioner be posted in the nearest Central State Farm. According to the petitioner, respondent no.2

served a show cause notice dt. 27.10.1990, as to why the penalty of removal from service be not imposed. The petitioner submitted reply, contending, that the transfer was challenged before the Labour Court Bikaner, and the Labour Court directed to transfer the petitioner, to the nearest place, and the petitioner gave option for Ladhuwal or Suratgarh, but he was not transferred to nearest place. He also contended, that the charges were proved without oral evidence, and the charges related to transfer to Kokilabari, and disobeying the order dt. 4.9.1981. It was contended, that after the award of the Labour Court, the charge relating to disobeying the transfer order to Kokilabari, and absenting from duty, is illegal. A typed copy of the said reply is produced as Ex.2. Then, vide Ex. 3, the petitioner was compulsorily retired as above. The copy of the enquiry report has been produced as Ex. 5. The petitioner has then alleged to have submitted appeal/petition, and reminders, against Ex.-3, contending, that Staff Regulation do not provide a minor and major misconduct, the show cause notice was not showing the alleged period of absence, and was treated as 'dies non', Staff Regulation are not applicable, and so on. With these averments, the order is challenged, on the ground, that the Staff Regulation are not applicable to the petitioner, and that a copy of the enquiry report was not supplied before passing of the order Ex.3, that the termination order is not speaking order, the reply Ex. 2 has not been

considered, the enquiry officer proved the charges without statement of oral witnesses, and when the charge sheet itself reveals that after award of the Labour Court dt. 1.4.1981, fresh order of transfer was passed, canceling the transfer to Kokilabari, and transferring the petitioner to Bahraich, then period of absence from 28.7.78 to 4.9.81 cannot be treated as absence from duty. Other ground taken is, that the enquiry officer himself found, that some of the points like posting at far away place, seems to be reasonable, because of prevailing conditions in Assam, illness of his wife, and later on death, small children, and there being nobody to look after, and as such it was difficult to go to Assam, and this plea seems to be genuine. The charged official requested the management many a times for charge of his posting station, in view of the problems, but in vain. It is contended, that on the findings of the enquiry officer, it cannot be said, that the petitioner remained absent from duty, and the punishment is alleged to have been imposed to harass him.

A reply has been filed on behalf of the respondents, pleading, that the petitioner was transferred to Kokilabari w.e.f. 6.4.1976, and was relieved w.e.f. 15.4.1976, with a direction to report at Kokilabari, but he failed to report, he was placed under suspension w.e.f. 28.9.1976, and a penalty of stoppage of one grade increment, with cumulative effect, was imposed, and he was

reinstated in service w.e.f. 27.7.1976. It was alleged, that the transfer was subsequently amended, to the effect, that he was to join at Bahraich, instead of Kokilabari, on 4.9.1981. In the meantime Case No. 12/78, filed by the petitioner, was decided by the Labour Court in favour of the Corporation, holding, that there has been no victimization, and the order of transfer was valid. This was challenged by the petitioner by a writ petition, being S.B. Civil Writ Petition No. 1265/81. It is then pleaded, that the petitioner failed to join, even at Bahraich. As such he was served with a charge sheet, and after conducting a regular enquiry, punishment has been imposed. It was contended, that the petitioner has not given full details of the charges in the writ petition, inasmuch as, he has not disclosed the contents of para-2 of Ex.-2, which has been reproduced in the reply being that, after the award of the Labour Court dt. 20.12.1978, and 31.8.1978, the SFCI Hqrs. re-ordered his transfer, and posted at Central State Farm, Bahraich, in the same capacity, with immediate effect, vide office order dt. 4.9.1981, which was sent to him at his address under registered A.D. cover, but he did not join his duties, and accordingly has unauthorisedly absented himself from duty w.e.f. 28.7.1978, and is guilty of disobedience of the order, and absence from duty. Then, it is pleaded, that the services of the petitioner were terminated in the year 1970, and thereupon the matter was referred to the Labour Court, who vide award

dt. 20.5.1975 reinstated with full back wages, and the petitioner was accordingly taken on duty, and thus the award of the Labour Court dt. 20.5.1975, has no relevance with the transfer. It was maintained, that the copy of the enquiry report was sent, along with show cause notice dt. 27.10.1990, and reply was submitted on 15.11.1990 and 23.11.1990. It was pleaded that on pronouncement of the award by the Labour Court, the petitioner was transferred to Bahraich. Then, a regular enquiry was conducted, after giving sufficient opportunity to the petitioner, to defend, and that he had disobeyed the order of transfer. Then, the stand about the non-applicability of Staff Regulation was denied, and detailed facts, and sequence of events have been submitted, and it was pleaded, that the regular staff is governed by the Staff Regulation, who are not governed by the Industrial law, and since regular employees are governed by the Staff Regulation, they cannot be termed as workman, under the Industrial Disputes Act, and that, the standing orders do not apply to those persons, to whom Staff Regulations are applicable. With this, it was pleaded, that the petitioner was appointed with the condition, that other conditions of service will be governed, as per the Rules and Regulations, which may be issued by the Corporation from time to time. Then, the judgment of Division Bench of this Court in D.B.C. Writ Petition No. 47/1977 P.S. Negi Vs. Union of India, decided on 18.9.1977, was pressed into service, so also that of

Hon'ble the Supreme Court, reported in Lab. I.C.1990-1481. In this reply a specific stand has been taken to the effect that the petitioner has not filed any appeal, as alleged in para-7, and that the petitioner has failed to produce any proof, with regard to the representation, said to have been made to Managing Director. Interalia with these pleadings, it was prayed, that the writ petition is liable to be dismissed.

Arguing the writ petition, the main submission made was, that the order Annexure-3 is a non-speaking order, that the enquiry officer found the charges proved without any evidence, and that when the enquiry officer himself had found the stand of the petitioner, for not joining to be having justification, he could not be found guilty, simply by assuming that he had admitted the charge about his remaining absent from duty. Another submission made is, that under the Regulations, compulsory retirement is not provided to be one of the penalties, and therefore, this penalty cannot be imposed.

Counsel for the respondent, on the other hand, supported the impugned order.

I have considered the submissions.

A look at the enquiry report shows, that the

petitioner participated in the enquiry, on 18.3.1987, and inspected the documents, and thereafter did not participate in the enquiry, despite issuance of so many letters, rather the letters were received back, with the remarks, that the petitioner is living at Abu Dhabi. Then, notices were published in the leading news-papers, in Hindi and English in January, 1990. Then, the petitioner appeared, and attended the enquiry on 26.2.1990, then again did not turn up on 1.3.1990, whereupon the Presenting Officer requested to close down the enquiry, which was prayed by the petitioner to be re-opened, and the enquiry was fixed on 4.7.1990. With this preface, the charge consists of two fold delinquencies; firstly having failed to obey the transfer order, transferring him to Kokilabari, and also having failed to obey another transfer order dt. 4.9.1981, and the other part is about having absented from duty unauthorisedly since 28.7.1978. From the statement of imputations, it is clear that he was transferred vide order dt. 6.4.1976, but he did not report on duty, and absented from duty, thereafter the award of the Labour Court was passed, and he was re-ordered to be transferred at Bahraich, vide order dt. 4.9.1981, but again he did not join. Then, the enquiry officer has found, that the petitioner has not specifically replied the charges, and has only vaguely alleged, that he was transferred by Shri Gupta, and due to this harassment he could not report to duty at such a far away place being Assam, etc. Learned

enquiry officer has noticed, that the charged official himself has admitted, that he remained absent from duty. Then, the enquiry officer has noted the contention of the present petitioner, about his being transferred to far away place, and the prevailing conditions at such place, illness of his wife, and later on death of his wife, his having small children, having nobody to look after, making it difficult for him to go to Assam, and it was conceded, that these are reasonable grounds, and noticed, that the petitioner requested the management, but in vain. Then, the enquiry officer has found, that in view of the admitted position about his absence from duty, the charge was found to be proved. It has also become clear from the pleadings, and the submissions made during the arguments, that the petitioner never complied, with any of the transfer order. May be, that he had challenged the earlier transfer order, but then, the petitioner had very intelligently omitted to plead, or disclose, the factual sequence of events, while as appears from the reply, that the petitioner simply challenged the transfer order before the Labour Court, and that litigation terminated in favour of the respondent, thereafter the petitioner challenged that order by way of writ petition before this Court, and since nothing has been pleaded in regard to the outcome of that writ, by any of the parties, in the totality of circumstances, the only natural inference, which can be deduced is, that the said writ petition no. 1265 of 1981 had been dismissed. It

appears, that respecting some observations made in the award, fresh transfer order was passed on 4.9.1981, and even that had not been complied with. Significantly, the petitioner has not disclosed, as to what was the challenge leveled against the initial transfer order, and what was the award, nor has he produced the copy of the award, nor has he disclosed the factum of filing of Writ No. 1265 of 1981, nor has he disclosed the out come thereof, nor about his having been terminated, and having been reinstated consequent upon the award of the Labour Court. In this background, admittedly the charge sheet was served vide memo dt. 28th Oct/04 Nov 86, and the learned counsel for the petitioner categorically admitted, that even after 1981, till passing of the order Ex. 3, the petitioner never reported on the place of transferred posting. Learned counsel was also pointedly asked, as to when did he for the first time represent before the respondent, projecting his difficulties against the transfer order, and projecting what difficulties, to that also, no satisfactory answer was given by the learned counsel.

In these circumstances, it cannot be accepted that simply because transfer order was issued on 4.9.1981, the petitioner cannot be treated to be unauthorisedly absent from 28.7.1978. It is a different story, that when admittedly the petitioner did not at all report on duty, and the charge-sheet was issued after more than five years

of the transfer order, hyper technical objections, as sought to be raised by the learned counsel, can hardly cut any ice in favour of the petitioner.

So far the difficulties of the petitioner, as have been realized by the enquiry officer, are concerned, it appears, that the Disciplinary Authority did consider the enquiry report, and all the defenses submitted by the petitioner, and then instead of imposing the punishment of removal from service, as proposed, appears to have taken much compassionate view, and imposed the punishment of compulsory retirement only, which obviously yields financial benefits to the petitioner (terminal benefits).

So far applicability of Staff Regulations is concerned, I am satisfied about the stand taken by the respondent, about their applicability to the petitioner. Nothing has been shown on the side of the learned counsel for the petitioner to satisfy me that for such delinquencies, and consequent upon such enquiry, the punishment of compulsory retirement could not be imposed under the Staff Regulations.

An argument was, of course, made about the order Ex. 3 to be non speaking order, but then, in my view, in view of the regular consistent decisions of Hon’ble the Supreme Court about requirement of prejudice to be shown,

on account of violation of principles of natural justice, and in absence of any requisite submission in that regard, this contention also cannot be accepted. Significantly, even in the alleged memo of appeal/representation, which is said to have been submitted by the petitioner, and submission whereof has been denied by the respondents, this is not a ground taken, rather every time, different set of objections is taken. Be that as it may.

An over all view of the matter, including the factum of admitted continuous absence of the petitioner from duty, even till the service of the charge-sheet, and despite the fresh transfer order dt. 4.9.1981, it cannot be said, that the petitioner has been able to make out a case, requiring interference in Ex.3, by this Court, under Article 226 jurisdiction, rather the Disciplinary Authority has already taken a compassionate view qua the petitioner.

The writ petition thus has no force, and is dismissed.

(N.P.GUPTA), J.